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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,780	07/13/2001	Robert J. Dunst JR.	076883-0268936	1823
27498	7590	06/17/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN LLP 2475 HANOVER STREET PALO ALTO, CA 94304-1114			MCALLISTER, STEVEN B	
			ART UNIT	PAPER NUMBER
			3627	
DATE MAILED: 06/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/904,780	DUNST ET AL.	
	<b>Examiner</b> Steven B. McAllister	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 March 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,5,7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5,7 and 9-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Objections***

Claim 9 is objected to because of the following informalities: claim 9 refers to the item being "blocked". This is ambiguous since the specification discusses that item can be physically blocked and that the items entry in the database can be blocked.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 5, 7, and 9-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites "wherein predetermined criteria are different for each of out-of-stock conditions, missing sign conditions, blocked shelf conditions and product-to-the-back-of-the-shelf conditions". However, as understood by the examiner the original disclosure does not show each of the conditions having a separate criteria. Rather, it appears to show an alert when an item sells slowly, and after investigation by personnel, the cause of the condition (e.g., missing sign, etc.) is entered in the system.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5, 7, and 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "wherein predetermined criteria are different for each of out-of-stock conditions, missing sign conditions, blocked shelf conditions and product-to-the-back-of-the-shelf conditions". However, it is not clear whether all criteria are being claimed are just one. In examining the claims, it was assumed that a single criteria providing an alert condition was claimed.

Claim 7 is unclear because it recites "obtaining one or more measurements from information in the database", but as understood by the examiner the value retrieved is not per se a measurement. The examiner acknowledges that the specification discusses the value in terms of a "measurement" (p. 11, lines 16-30 of spec.), that use does not appear to fit the common definition of a measurement. *Merriam Webster's College Diction, 10 ed.* defines a measurement as "a figure, extent, or amount obtained by measuring". However, the value contemplated in the specification and claims is a number that while using measurements as its input is based on statistical manipulation – for instance the average or mean number of units sold per hour. In examining the claim the "measurement" retrieved from the database is interpreted as a "value".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Teicher et al (5,933,813).

Teicher shows means for collecting a plurality of transaction data blocks comprising scanners or other sensors; means for constructing a temporary table and determining a calculated value each field comprising a CPU and memory; means for adding the calculated value to an existing value comprising a CPU and memory; means for determining if an alert condition exists comprising CPU and memory; and means for issuing an alert comprising CPU, memory, and screen.

As to claim 20, all elements are shown.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7, 9, 10, and 12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Teicher et al (5,933,813).

Teicher shows collecting a plurality of transaction data blocks from one or more data collection devices, the data including POS information. It further shows updating a table of transaction data in memory. It further shows issuing an alert, comprising providing an indication that a price has been lowered low sales for an item. If so, it issues an alert comprising announcing that the price has been lower price.

Alternatively Teicher shows all elements except providing an alert. However, providing an alert when transaction data satisfy certain criteria is notoriously old and well known in the art. For example, it is well known to issue an alert when sales data shows inventory approaching a low level. It would have been obvious to one of ordinary skill in the art to modify the method of Teicher by providing the alert in order to ensure that sufficient inventory is maintained.

As to claim 2, Teicher shows returning to the collecting step, updating, issuing, and analyzing steps performed iteratively.

As to claim 3, Teicher inherently shows initializing each field before the collecting step since such a step must occur in order to provide valid collected data (e.g., sales must be set to zero at the initially in order to provide valid sales data as sales data are collected and added.); and initializing when the period is over.

As to claim 7, Teicher shows all elements of the claim.

As to claim 9, Teicher shows all elements of the claim including determining whether the item identified by the alert command has been blocked (since upon initial determination of an alert situation the alert is issued and a wait period is placed to determine future performance).

As to claim 10, Teicher shows issuing a page regarding the alert.

As to claim 12, Teicher shows all elements of the claim since a time stamp is necessary to determine the end of the waiting period and the present sale status is recorded showing that the item has been placed on promotion.

Claims 5, 11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al.

As to claim 5, Teicher shows all elements of the claim except the particular polling methodology. However, it is notoriously old and well known in the art to poll data as recited. It would have been obvious to one of ordinary skill in the art to do so in order to take advantage of existing methodologies.

As to claim 11, Teicher shows all steps except communicating a message via email. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art send such a message in order to provide a record of the alert at the receiver's apparatus.

As to claims 13-15, Teicher shows all steps except performing the recited steps of the shelf inspection and reporting the status. However, performing these steps is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the method of Teicher by performing the recited inspection and reporting steps in order to ensure that the stock is in order and in order to keep the system up to date.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al as applied to claim 1 above, and further in view of Halperin et al (6,015,004).

Teicher shows all steps except determining whether an alert has been received; inspecting the shelf location; selecting a descriptor to describe the condition; transmitting it back; and taking corrective action. It is notoriously old and well known in the art to determine whether an alert, such as an out of stock alert has been received from an inventory tracking system. It would have been obvious to one of ordinary skill in the art to further modify the method of Teicher by determining whether such an alert has been received in order to keep stocks supplied. Halperin shows inspecting a shelf location, selecting a descriptor to describe the condition of the location, transmitting the descriptor back to the alert device and taking corrective action. It would have been obvious to one of ordinary skill in the art to further modify the method of Teicher in order to further facilitate maintaining of stocks.

***Response to Arguments***

Applicant's arguments filed 3/7/2005 have been fully considered but they are not persuasive.

Regarding the arguments to the rejection of claim 19, the examiner respectfully believes that Teicher shows all elements, including means for providing an alert. Applicant argues that the present invention presents an alarm indicative of a particular condition (e.g., a blocked aisle). However, as understood by the examiner it only produces a general alert. The examiner respectfully believes that Teicher provides a different type of alert, providing an indication that a price has been dropped on the item in response to low sales. While this may not be the particular type of alert contemplated by the Applicant, it is believed that it satisfies the language of the claim.

Regarding the arguments dealing with the alternative 103 rejection of claim 1, it is noted that the particular alternative rejection has been withdrawn and replaced by another, and that the arguments are therefore moot.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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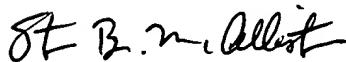
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven B. McAllister  
Primary Examiner  
Art Unit 3627



Steven B. McAllister

STEVE B. MCALLISTER  
PRIMARY EXAMINER